

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1904.

No. 1432.

289

LUSANAH A. CRANDELL, APPELLANT,

vs.

CONSTANCE CLASSEN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 24, 1904.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1904.

No. 1432.

LUSANAH A. CRANDELL, APPELLANT,

vs.

CONSTANZE CLASSEN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

LUSANAH A. CRANDELL, Appellant, }
vs. } No. 1432.
CONSTANZE CLASSEN. }

a Supreme Court of the District of Columbia.

CONSTANZE CLASSEN, Plaintiff, }
vs. } No. 46146. At Law.
LUSANAH A. CRANDELL, Defendant. }

UNITED STATES OF AMERICA, { ss :
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration.*

Filed April 10, 1903.

In the Supreme Court of the District of Columbia.

CONSTANZE CLASSEN, Plaintiff, }
vs. } At Law. No. 46146.
LUSANAH A. CRANDELL, Defendant. }

1. The plaintiff, Constanze Classen, sues the defendant, Lusanah A. Crandell, for that heretofore, to wit, on or about the fifteenth day of May, 1901, at the city of Washington in the District of Columbia, the said defendant undertook and promised with the said plaintiff that, if the said plaintiff would buy and purchase thirty shares of the capital stock of the Kretol Chemical Company, a corporation, she, the said defendant would redeem and repurchase the same at and for the price paid therefor by the said plaintiff at any time the said shares were unsatisfactory to the said plaintiff, and the said plaintiff then and there undertook and promised with the said defendant that she would buy and purchase thirty shares of the capital stock of the said company, if the said defendant would redeem and repurchase the same for and at the price paid therefor by the said

plaintiff at any time the said shares of stock were unsatisfactory to the said plaintiff; and the plaintiff avers that thereafter, to wit, on or about the first day of June, 1901, the plaintiff, relying upon the said promise of the said defendant, and at the special instance and request of the said defendant, did buy and purchase thirty shares of the capital stock of the said company, to wit, twenty-two shares at and for the price of fifteen (\$15) dollars per share, the same being issued to and in the name of Wanda Meta Steffens, and eight shares thereof at and for the price of twelve and 50 / 100 (\$12.50) dollars per share, the same being issued to and in the name of the plaintiff, for all which said shares the plaintiff paid the sum of four hundred and thirty (\$430) dollars; that thereafter the said shares of stock became and were unsatisfactory to the plaintiff, of which the defendant had notice; yet the defendant, not regarding the said agreement nor her promises and undertaking aforesaid, has not redeemed and repurchased the said shares of stock at the price paid therefor by the said plaintiff, nor any part thereof, although often requested so to do, but wrongfully and unjustly has hitherto wholly neglected and refused, and still neglects and refuses, so to do, to the damage of the plaintiff in the sum of four hundred and thirty (\$430) dollars. Wherefore the plaintiff brings this suit, and claims the sum of four hundred and thirty (\$430) dollars with interest from the first day of June, 1901, besides costs.

2. The plaintiff, Constanze Classen, sues the defendant, Lusanah A. Crandell for that whereas before and at the time of the making of the agreement and the promise and undertaking of the said defendant hereinafter mentioned, the said defendant was a stockholder and director of the Kretol Chemical Company, a corporation, and as such stockholder and director was interested in its business operations and financial success, and heretofore, to wit, on or about the fifteenth day of May, 1901, at the city of Washington in the District of Columbia, the said defendant undertook and promised with the said plaintiff that, if the said plaintiff would buy and purchase thirty shares of the capital stock of the Kretol Chemical Company, a corporation, she, the said defendant, would redeem and repurchase the same at and for the price paid therefor by the said plaintiff at any time the said shares were unsatisfactory to the said plaintiff, and the said plaintiff then and there undertook and promised with the said defendant that she would buy and purchase thirty shares of the capital stock of the said company, if the defendant would redeem and repurchase the same for and at the price paid therefor by the said plaintiff at any time the said shares of stock were unsatisfactory to the said plaintiff. And the plaintiff avers that thereafter, to wit, on or about the first day of June, 1901, she, the said plaintiff, relying upon the said promise of the defendant, for and in consideration of the premises and of the mutual promises aforesaid, and at the special instance and request of the defendant, did buy and purchase thirty shares

of the capital stock of the said company, to wit, twenty-two shares at and for the price of fifteen (\$15) dollars per share, the same being issued to and in the name of Wanda Meta Steffand, and eight shares thereof at and for the price of twelve and 50/100 (\$12.50) dollars per share, the same being issued to and in the name of the plaintiff, for all which said shares the plaintiff paid the sum of four hundred and thirty (\$430) dollars: and thereafter the said shares of stock became and were unsatisfactory to the plaintiff, of which the defendant had notice; yet the defendant, not regarding the said agreement nor her promise and undertaking aforesaid, has not redeemed and repurchased the said shares of stock at the price paid therefor by the said plaintiff, nor any part thereof, although often requested so to do, but wrongfully and unjustly has hitherto wholly neglected and refused, and still neglects and refuses, so to do, to the damage of the plaintiff in the sum of four hundred and thirty (\$430) dollars.

Wherefore the plaintiff brings this suit and claims the sum of four hundred and thirty (\$430) dollars with interest from the first day of June, 1901, besides costs.

3. And the plaintiff sues the defendant for money payable by the defendant to the plaintiff for goods bargained and sold by the plaintiff to the defendant; and for goods sold and delivered by the plaintiff to the defendant; and for work done and materials provided by the plaintiff for the defendant at his request; and for money lent by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant at his request; and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them.

And the plaintiff claims four hundred and thirty (\$430) dollars, with interest from the first day of June, 1901, according to the particulars of demand hereto annexed, besides costs.

T. L. JEFFORDS,
GEO. B. CHASE,
Attorneys for Plaintiff.

Rule to Plead.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the date of service hereof; otherwise judgment.

T. L. JEFFORDS,
GEO. B. CHASE,
Attorneys for Plaintiff.

Particulars of Demand.

Filed April 10, 1903.

WASHINGTON, D. C., April 4, 1901.

Lusannah A. Crandall to Constanze Classen, Dr.

To amount paid by Constanze Classen for twenty two shares of the capital stock of the Kretol Chemical Company at \$15 per share.....	\$330.
To amount paid by Constanze Classen for eight shares of the capital stock of the Kretol Chemical Company at \$12.50 per share.....	100.
Total.....	\$430.

With interest from the first day of June, 1901.

Affidavit.

STATE OF NEW JERSEY, }
 County of Atlantic, } ss.:

Constanze Classen, being first duly sworn, on oath deposes and says that she is the person named as plaintiff in the declaration to which this affidavit is attached and which is made a part hereof, and that Lusannah A. Crandell is the person named therein as defendant; that she has a good cause of action against the defendant which is grounded upon the following facts; that on or about the fifteenth day of May, 1901, at the city of Washington in the District of Columbia, the defendant informed this affiant that she the said defendant, was a stockholder and director of the Kretol Chemical Company, a corporation, and as such director was familiar with the business affairs and the financial condition of the said company, and was consequently largely interested in its financial success; that the

6 business of the company was being conducted at great profit and would result in large dividends being declared upon its stock and would make the same very valuable, and she then and there urged this affiant to buy some of the stock of the company as an investment, and undertook and promised with this affiant that, if this affiant would buy and purchase thirty shares of the said stock, she, the defendant would redeem and repurchase the same at the price paid therefor by this affiant at any time they were unsatisfactory to this affiant, and this affiant then and there undertook and promised with the defendant that she would buy the said thirty shares, if the defendant would redeem the same at the price paid therefor at any time they were unsatisfactory to this affiant. And this affiant on or

about the first day of June, 1901, by reason of the premises and relying upon the said promise of the defendant, and in consideration of the premises and of the mutual promises, as aforesaid, did, at the instance and request of the said defendant, buy and purchase thirty shares of the said stock, to wit, twenty-two shares at the price of \$15 per share, which were issued to and in the name of Wanda Meta Steffens, the daughter of the affiant, and eight shares at the price of \$12.50 per share, and this affiant paid for all of the said shares of her own money the sum of \$430. That thereafter the affairs of the said company became involved and were placed in the hands of a receiver and the said shares became wholly unsatisfactory to this affiant, of which the defendant had notice; that thereupon this affiant delivered to the defendant the said shares and demanded from her the said sum of \$430, and that she redeem the said shares at the price paid therefor by this affiant, but the defendant wholly refused, and still refuses to pay the same, or any part thereof, and the said sum of \$430, with interest from the first day of June, 1901, is justly due and owing from the defendant to the plaintiff by reason of the premises, exclusive of all set-offs and just grounds of defense.

CONSTANZE CLASSEN.

Subscribed and sworn to before me at Atlantic City, New Jersey, this 7th day of April, 1903.

S. CAMERON HINKLE,
Notary Public of N. J.

[SEAL.]

Pleas and Affidavits.

Filed July 10, 1903.

In the Supreme Court of the District of Columbia.

CONSTANZE CLASSEN	} At Law. No. 46146.
vs.	
LUSANAH A. CRANDELL.	

1. The defendant for plea to the first count of the plaintiff's declaration herein, says that she never promised as therein alleged.

2. The defendant for a further plea to the first count of the plaintiff's declaration herein, says that she is not indebted as therein alleged.

3. The defendant for plea to the second count of the plaintiff's declaration herein, says that she never promised as therein alleged.

8 4. The defendant for a further plea to the second count of the plaintiff's declaration herein says that she is not indebted as therein alleged.

5. The defendant for plea to the third count of the plaintiff's declaration herein, says that she never promised as therein alleged.

6. The defendant for a further plea to the third count of the plaintiff's declaration herein, says that she is not indebted as therein alleged.

VICTOR H. WALLACE,
Attorney for Defendant.

Affidavit of Defense.

DISTRICT OF COLUMBIA, ss :

Lusanah A. Crandell, being first duly sworn, for affidavit of defense in answer to the affidavit of claim filed in this case by Constanze Classen, the plaintiff herein, on her oath says that she is the defendant herein; that she was formerly a director in the Kretol Chemical Company, having invested a large amount of her own money in the stock of this company, and that she at that time believed that the affairs of the company were in a prosperous condition, and that the company would pay good dividends to its stockholders. That affiant was questioned by Mrs. Constanze Classen about this stock as an investment, and affiant informed Mrs. Classen that to the best of her knowledge and belief it was a sound investment, and one likely to return a good profit, and that she had such faith in this stock that if
9 the said Mrs. Classen, who was a friend of affiant, invested in this stock, and upon investigation made within a reasonable time, found it an unsatisfactory investment, affiant would purchase her stock from her at the price she paid for it. That this was absolutely a personal offer to Mrs. Classen, and was not intended for the benefit of any other person, affiant's object in making such offer being that Mrs. Classen might herself become a stockholder of record in the Kretol Chemical Company. That affiant did not offer to purchase shares from Wanda Meta Steffens, or any other person, but only offered to purchase shares bought and held by Mrs. Classen, provided she investigated their value promptly, and tendered them to affiant within a reasonable time after their purchase; and affiant further expressly denies that she ever offered to purchase or redeem even the shares of Mrs. Classen "at any time the shares were unsatisfactory" to her, as alleged in her affidavit, but repeats that she was only to purchase these shares if they were tendered to her within a reasonable time after their purchase by Mrs. Classen. That this offer on the part of affiant was never accepted by Mrs. Classen, nor did Mrs. Classen in return for affiant's offer to purchase ever promise on her part to sell her shares to affiant at the price she paid for them in case they proved unsatisfactory to her; but the offer of affiant remained a mere unaccepted offer, and never ripened into a contract. That affiant believes that Mrs:

Classen did subsequently purchase certain shares of stock in the Kretol Chemical Company, and that certain other shares were purchased by Wanda Meta Steffens, but affiant denies that these shares, or any other shares purchased by these parties, were purchased on the faith of the alleged offer by her to Mrs. Classen. Affiant has no knowledge as to who furnished the money to purchase the shares of

10 Wanda Meta Steffens, but affiant says that she never made any offer nor assumed any obligation whatever to purchase any stock owned or held by Wanda Meta Steffens. That after Mrs. Classen became a stockholder in the Kretol Company she seemed well satisfied with her purchase of the stock, and never in any way offered to sell it to affiant, although there was a ready market for the stock, and — it had been offered to affiant within a reasonable time after it was purchased by Mrs. Classen, at the price she paid for it, affiant could have resold it at a profit. That Mrs. Classen received and accepted dividends on the stock held by her and has never in any way offered or tendered them to affiant. That affiant never heard that Mrs. Classen was dissatisfied with her purchase of the Kretol stock until after the company went into the hands of a receiver, and the stock became practically valueless, which was an unreasonably long time after the stock had been purchased by Mrs. Classen; that then, for the first time, Mrs. Classen demanded of affiant that she purchase not only her stock, but the stock of Wanda Meta Steffens also, at the price she alleged she paid for it; this affiant refused to do. Affiant says, in conclusion that she is not indebted to the plaintiff, Constanze Classen, as alleged in her affidavit of claim, or in any manner, or in any sum whatever.

LUSANAH A. CRANDELL.

Subscribed and sworn to before me this 9th. day of July, 1903.

[SEAL.]

W. E. WRIGHT,
Notary Public, D. C.

11

Joinder of Issue.

Filed July 14, 1903.

In the Supreme Court of the District of Columbia.

CONSTANZE CLASSEN	}	At Law. No. 46146.
vs.		
LUSANAH A. CRANDELL.		

The plaintiff joins issue upon the defendant's first, second, third, fourth, fifth and sixth pleas.

TRACY L. JEFFORDS,
GEO. P. CHASE,
Attorney- for Plaintiff.

Memorandum.

March 1, 1904.—Verdict for plaintiff for \$400. with interest from January 1, 1902.

12 Supreme Court of the District of Columbia.

FRIDAY, *March 18, 1904.*

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, chief justice, presiding.

* * * * *

CONSTANZE CLASSEN, Plaintiff,	} No. 46146. At Law.
vs.	
LUSANAH A. CRANDELL, Defendant.	

Upon consideration of defendant's motion for a new trial, filed herein March 7th, 1904, by his attorney Mr. Victor H. Wallace, it is ordered that said motion be and the same is hereby overruled and judgment on verdict is ordered: thereupon it is considered and adjudged, that the plaintiff herein recover against the defendant herein, the sum of four hundred dollars (\$400.00) with interest thereon from July 1st, 1902, being the money as aforesaid found payable by said defendant to said plaintiff by reason of the premises, together with her costs of suit to be taxed by the clerk, and have execution thereof.

From the foregoing the defendant by her attorney in open court, notes an appeal to the Court of Appeals, and prays that bond be fixed: whereupon, it is ordered that the defendant furnish bond herein, on such appeal, to operate as a supersedeas, in the penalty of eight hundred (\$800.00) dollars, with surety or sureties to be approved by this court.

13 Supreme Court of the District of Columbia.

MONDAY, *April 4th, 1904.*

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, chief justice, presiding.

* * * * *

CONSTANCE CLASSEN, Plaintiff,	} No. 46146. At Law.
vs.	
LUSANAH A. CRANDELL, Defendant.	

Comes now the attorney for the defendant herein, and presenting to the court the bill of exceptions, taken at the trial of this cause, prays that the same be signed and made of record now for then, which is accordingly done.

Bill of Exceptions.

Filed April 4, 1904.

In the Supreme Court of the District of Columbia.

CONSTANZE CLASSEN, Plaintiff,	} At Law. No. 46146.
vs.	
LUSANAH A. CRANDELL, Defendant.	

Be it remembered that upon the trial of this cause, before Mr. Chief Justice Clabaugh and a jury, the plaintiff, CONSTANZE CLASSEN, to maintain the issue on her part joined offered evidence on her own behalf tending to show as follows :

That her name is Constanze Classen and that she resides in Atlantic City, in the State of New Jersey. That on or about
 14 the fifteenth day of May, 1901, she called upon the defendant, at her residence in the city of Washington, in regard to certain stock in which she, the plaintiff, was then interested. That the defendant advised her against the same, but stated that she was a director and officer in the Kretol Chemical Company, a corporation, and the largest stockholder, but one, in said company. That she advised the plaintiff to invest her money in the stock of the Kretol Company, stating that it was a safe investment and that the stock was paying 12% dividends on its then selling price. That the defendant urged the plaintiff to purchase fifty shares of the said stock and then and there stated to the plaintiff that she owned the house in which she lived and other real estate in the city of Washington, including the Crandell building on 7th street. That she was financially able to perform any contract that she might make with the plaintiff. That she then and there promised and agreed with the plaintiff that if she would purchase thirty shares of the stock of the Kretol Chemical Company, she, the defendant, would repurchase same from the plaintiff at any time they became unsatisfactory to her. That the plaintiff, relying upon the representations and promises of the defendant, then and there agreed to purchase said thirty shares of stock. That she did purchase same, twenty-two of the shares being issued in the name of Wanda Meta Steffens, the daughter of plaintiff, on June 1st, 1901, and eight shares in the name of plaintiff a few days later. That the plaintiff paid for the said shares the sum of four hundred and thirty dollars, all of which was her own money saved from her own earnings and that none of the money was furnished by her daughter or anybody else. That she paid the
 15 same to the defendant. That the certificates of shares issued in the name of her daughter were delivered to the plaintiff by the defendant and accompanied by a letter in the handwriting of the defendant.

Thereupon the plaintiff offered in evidence the said letter which is as follows:

"JUNE 1ST, 1901.

610 H street N. W., Washington, D. C.

MY DEAR MRS. CLASSEN: For your \$320.00 which I sent up to Mr. Browne, I received the enclosed stock. If at any time it is not satisfactory, bring or send it to me, and I will redeem it at the price you paid. Yesterday I received a note from "head quarters" putting the price at \$17.50 To-day some has come in and you have the benefit. Let me hear from you and your daughter to whom give my morning greetings. Send the address for forwarding your interest due the first week in July next. With good wishes for your future and "good luck" with your Kretol stock.

Your friend,

L. A. CRANDELL.

I enclose the note I mentioned to you as putting the price \$17.50. The portion I cut off was strictly private. You will know if it is correct."

The envelope in which this letter was sent was also offered in evidence. It was addressed as follows:

"Mrs. C. CLASSEN,

or

Miss W. M. STEFFENS,

730 Eleventh St. N. W.,

Washington, D. C.

(Courtesy of Miss Chapman)."

16 Thereupon the defendant, by her attorney, objected to the admission of this letter in evidence, upon the ground that it was not a sufficient memorandum under the statute of frauds, as it did not purport to be a memorandum of any previous contract, but showed upon its face that it was an independent contract in itself; and its admission in evidence as an independent contract was also objected to because it had reference only to a purchase of stock that had already taken place and not to any future transaction, and was consequently only a *nudum pactum* without any consideration to support it.

And thereupon the court overruled these objections, and permitted the letter to be read in evidence, to which action of the court the defendant, by her attorney, then and there excepted.

The plaintiff further testified that all the said thirty shares of stock belonged to her and after receiving the same from the defendant they remained in her sole possession until she returned and delivered them to the defendant. That the payment of the July dividend on said stock, as promised by the defendant, was not made and all of said shares became unsatisfactory to the plaintiff. That

on the 28th day of December, 1901, she called upon the defendant at her residence in the city of Washington and stated to her that the said shares were unsatisfactory to the plaintiff and requested the defendant to repurchase the same at the price paid by the plaintiff, to wit, four hundred and thirty dollars. That the defendant then and there agreed to do so, and the said shares were by the said plaintiff delivered to said defendant who asked a few days' time in which to make repayment to the plaintiff, alleging as a reason that she was complying with other similar contracts

17 made by her to repurchase stock of the said company from other persons. That at that time she was short of money but in a few days would have the funds and would pay the plaintiff the said four hundred and thirty dollars. That the defendant did not pay the plaintiff the said four hundred and thirty dollars, putting her off from time to time and finally told the plaintiff that she would have to bring suit to collect it. That at the time of the delivery of the said thirty shares to the defendant, she the defendant gave the plaintiff a receipt for the same, which was without objection on the part of the defendant offered in evidence. Receipt was as follows :

"Received of Mrs. Constanze Classen (8) eight shares of Kretol stock and twenty-two (22) shares of Kretol stock of Wanda Meta Steffens to dispose of through Mr. Brown.

Washington, D. C. Dec. 28th. 1901.

L. A. CRANDALL,
610 H Street N. W., Local."

Cross-examination :

The plaintiff stated that she is married. Plaintiff further stated that she could not remember whether she wrote anything on the back of the certificates delivered by her to the defendant on December 28, 1901, or whether Wanda Meta Steffens had written anything upon the back of any of the same.

Thereupon the plaintiff rested.

Thereupon the defendant, to maintain the issue on her part joined, offered evidence tending to show as follows :

18 LUSANAH A. CRANDELL testified in her own behalf in substance, as follows: That she is the defendant in this suit, and that at the time of the purchase of the aforesaid stock she was a director of and largely interested — the Kretol Chemical Company. Mrs. Classen came to see her, and wanted to buy Kretol stock. The situation was explained to her. Mrs. Classen did buy the Kretol stock set out in her declaration. But defendant never promised to redeem it personally, but acted only as the agent of Mr. Browne, and she believes Mrs. Classen so understood. That the letter dated June 1, 1901, and offered in evidence, is in the handwriting of the

defendant and was sent by her to the plaintiff upon the delivery of part of the aforesaid stock. That the plaintiff delivered the said shares to her on December 28, 1901, and that the receipt offered in evidence was given by her to the plaintiff and is in her own handwriting. That the stock was brought to her for the purpose of having it redeemed by Mr. Browne. That she accepted the stock. That she was not at this time asked to redeem the stock personally, and the first time Mrs. Classen asked her to redeem it personally was shortly before plaintiff's counsel was employed in the case. That in writing the letter offered in evidence she used the pronoun "I," because the business was transacted through her, but she believes Mrs. Classen understood that she spoke as the agent of Mr. Browne.

Thereupon ROLLO W. BROWNE, a witness produced by and on behalf of the defendant gave evidence in substance as follows:

19 That he was an officer of the Kretol Chemical Company during the year 1901, and the spring of 1902. That during the first part of January, 1902 he gave the plaintiff his personal check for thirty dollars, the same being from funds placed in his hands by defendant for that purpose. That the sum was not a dividend declared by the company. That the company was placed in the hands of a receiver during the month of March, 1902.

Thereupon, ELANOR S. CHAPMAN, a witness produced by and on behalf of the defendant gave evidence in substance as follows:

That she lives with Mrs. Crandall at 610 H street, N. W. That she knows Mrs. Classen. That she went to Mrs. Classen for the money to purchase the stock. Mrs. Classen told her at this time that she had consulted a druggist who was a friend of hers, and that he had told her not to purchase the stock, but that she had seen Mr. Browne, and that he had advised her to purchase the stock, and that she had concluded to buy it. That afterwards she saw Mrs. Classen coming out of the Kretol office, and she said that Mr. Browne had just paid her her interest. This was sometime between August 15 and December 28th. 1901.

Thereupon the defendant rested.

Thereupon the plaintiff being recalled, offered evidence tending to prove as follows:

20 That during the early part of January, 1902, she received from the witness Rollo W. Browne, his personal check for thirty dollars. That the defendant stated to her that she had placed the sum of twelve hundred dollars in the hands of Mr. Browne for the purpose of paying interest or dividends to persons who had purchased stock of the said company under agreements with the defendant similar to the one made with the plaintiff.

Thereupon the plaintiff again rested.

Thereupon the defendant, by her attorney, requested the court to instruct the jury as follows:

"If the jury shall find from the evidence in this case that the defendant did promise the plaintiff that if the plaintiff would purchase shares of Kretol stock the defendant would buy or otherwise redeem the same from her at any time they proved unsatisfactory to her, and that the plaintiff did thereafter, relying upon this promise of the defendant, furnish a sum of money for the purchase of Kretol stock, and did actually buy Kretol stock therewith, but did cause a portion of the said stock so purchased to be issued in her own name, and a portion in the name of her daughter, Wanda Meta Steffens, then the jury are instructed that she cannot recover in this action as to that portion of the money which went to purchase the stock issued in the name of Wanda Meta Steffens, and as to that portion of her claim their verdict must be for the defendant."

But the court denied this prayer, and refused to so instruct the jury, and to this action of the court, the defendant, by her attorney, then and there excepted.

Thereupon the court proceeded to instruct the jury generally upon the law of the case, and the jury, upon retiring and considering the case, rendered a verdict for the plaintiff for four hundred (\$400) dollars, with interest from the first day of January, 1902.

Each of the defendant's exceptions growing out of the proceedings in this case were taken at the trial of this case, and noted upon
21 the minutes of the court before the jury retired to consider their verdict, and the defendant, by her attorney, prays the court to sign and seal this her bill of exceptions, which is accordingly done now for then, this fourth day of April, 1904.

HARRY M. CLABAUGH, [SEAL.]
Chief Justice.

Settled by agreement.

TRACY L. JEFFORDS,
GEO. P. CHASE,
Attorneys for Plaintiffs.
VICTOR H. WALLACE,
Attorney for Defendant.

Memorandum.

April 9, 1904.—Appeal bond filed.

Order for Record on Appeal.

Filed May 5, 1904.

In the Supreme Court of the District of Columbia.

CONSTANZE CLASSEN	}	At Law. No. 46146.
vs.		
LUSANAH A. CRANDELL.		

Portions of record to be printed on appeal.

Declaration ;
 Pleas ;
 Joinder of issue ;
 Memorandum as to verdict ;
 Judgment ;
 Bill of exceptions ;
 Memorandum as to bond.

VICTOR H. WALLACE,
Attorney for Defendant.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 22, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 46,146, at law, wherein Constanze Classen is plaintiff, and Lusanah A. Crandell is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe
 Seal Supreme Court my name and affix the seal of said court, at
 of the District of the city of Washington, in said District, this
 Columbia. 23rd day of May, A. D. 1904.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1432. Lusanah A. Crandell, appellant, vs. Constanze Classen. Court of Appeals, District of Columbia. Filed May 24, 1904. Henry W. Hodges, clerk.

COURT OF APPEALS,
DISTRICT OF COLUMBIA,
FILED

OCT 8 1904

Henry W. Madison
In the Court of Appeals
OF THE DISTRICT OF COLUMBIA.
OCTOBER TERM, 1904.

No. 1432.

LUSANAH A. CRANDELL, APPELLANT,

vs.

CONSTANZE GLASSEN.

BRIEF FOR APPELLANT.

VICTOR H. WALLACE,

Attorney for Appellant.

LAW REPORTER PRINT, WASHINGTON, D. C.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1904.

No. 1432.

LUSANAH A. CRANDELL, APPELLANT,

vs.

CONSTANZE CLASSEN.

Statement of the Case.

The material facts of this case are, that during the month of June, 1901, eight shares of Kretol stock were issued to Mrs. Constanze Classen, a married woman, and twenty-two shares to Wanda Meta Steffens, her daughter. Mrs. Classen claims to have furnished the money paid for this stock, which money, she states, "was saved from her own earnings." It is admitted that the stock of Wanda Meta Steffens cost \$15 per share, or \$330, and that the stock of Mrs. Classen cost \$12.50 per share, or \$100.

Mrs. Classen, who was the plaintiff in the court below, claims that she purchased this stock upon the faith of an alleged promise by Mrs. Lusanah A. Crandell, the defendant below and appellant in this court, to repurchase the same at the price paid for it, if the stock should prove unsatisfactory. She states that she did return the stock to Mrs. Crandell, but was never repaid for the same. To enforce this alleged contract she brought this suit for \$430, the amount paid for the stock.

The defendant denied making any such agreement as was claimed by the plaintiff. She stated that she never agreed to repurchase the stock personally, but acted as the agent of one Mr. Brown, and that she believes Mrs. Classen so understood. That when the stock was returned to her it was returned for redemption by Mr. Brown, and she was not asked to redeem it personally. A receipt was introduced in evidence stating that the stock was to be disposed of "through Mr. Brown."

The trial resulted in a verdict for the plaintiff for \$400, this being for the full amount claimed, less \$30, received in lieu of dividend on the stock, and which counsel agreed should be deducted from the amount claimed in the declaration.

Assignment of Errors.

1. The court erred in refusing to instruct the jury as requested by the defendant.
2. The court erred in the admission in evidence of the letter of June 1, 1901, over defendant's objection.

ARGUMENT.

I.

The instruction to the effect that Mrs. Classen could not recover as to the stock issued in the name of Wanda Meta Steffens, and which was refused by the court, and which forms the basis of the first assignment of error, is found in the record at page 13. The appellant contends that this instruction should have been given because Mrs. ~~Steffens~~ was a married woman, and as such could only sue as to matters "having relation to her sole and separate property" (act of June 1, 1896; see *Schneider vs. Garland*, 1 Mackey, 355-6). This stock was purchased before the Code went into effect,

Classen

and the certificates were returned to Mrs. Crandell for the alleged redemption on December 28, 1901, which was three days before the Code became operative. Therefore the entire transaction was governed by the married woman's act of June 1, 1896, 2 Sup. Rev. Stat. 490. Under that act, in order for property purchased by a married woman with her earnings, to become a part of her separate estate, the property must have been purchased in her own name. In other words, she must have marked it in this way as a part of her separate estate. She could not invest such money in the name of another person, and then sue in her own name regarding it. The language of the statute is plain; it says:

"The earnings of any married woman from her trade, business, profession, occupation, labor, or service shall be her sole and separate property, and may be used and invested in her own name."

But irrespective of the language of the statute, by the principles of general law, the stock issued in the name of Wanda Meta Steffens could not possibly be a part of the separate estate of Mrs. Classen. It mattered not that she furnished the money to purchase it, or that she may have retained the certificate in her possession. The stockholder of record was Wanda Meta Steffens, and the stock was hers. Her mother had nothing but the manual possession of a piece of paper evidencing the ownership, by Wanda Meta Steffens, of the stock in the Kretol Company. This was not the stock itself, and the mere possession of the paper certificate did not invest her mother with the property in the stock.

Roberts' Appeal, 85 Pa. St. 84, 86.

Deming vs. Williams, 26 Conn. 226, 229.

Mrs. Classen does not pretend to say that this certificate was ever endorsed to her, and, without direct evidence to the contrary, the presumption is that Wanda Meta Steffens,

being shown to have once been the owner of the stock, still continues to be the owner of such stock.

Choisser vs. The People, 140 Ill. 21, 35.

While it is believed this case is governed by the act of June 1, 1896, yet even if the present Code can be held to have any application, this would not alter the result. A married woman under the Code has no right to either make or enforce contracts relating to stock standing in the name of another person. Section 1155 of the Code extends her capacity no further than to enable her to sue upon contracts personal to herself, but it does not enable her to sue regarding the property of others, or upon contracts made with reference to such property.

Even had Mrs. Classen been a feme sole at the times of the purchase of the stock and the surrender of the certificates, a subsequent marriage would have destroyed her right to sue as to the stock of Wanda Meta Steffens, for her right to recover as to this stock, if any, would have rested on the ground of agency, and so would have been disassociated from any individual rights personal to herself; it being remembered that there was no evidence as to a gift, sale, or transfer of any sort of this stock by Wanda Meta Steffens to her mother. It is as to these personal rights only, whether of property or under contract, that the Code gives a right of action to a married woman.

II.

The second error assigned lies in the admission, over the objection of the defendant, of the letter of June 1, 1901 (Rec. p. 10). This letter was sent with the daughter's stock. The mother's stock was not purchased until "a few days later." Now, any promise contained in this letter, by its very terms, relates to the "enclosed stock," which was the daughter's stock. The letter referred to no future transaction. This formed one of the specific grounds of objection

made to the introduction of the letter at the time it was offered in evidence, it being "objected to because it had reference only to a purchase of stock that had already taken place and not to any future transaction." But the court allowed this letter to go to the jury over¹ this objection and without any qualification whatever. This letter was of course taken by the jury to apply to the whole transaction, both as to the daughter's stock and the mother's, and its introduction in evidence undoubtedly did more than anything else to turn the scale in favor of the plaintiff.

Now, if the first assignment of error is well taken, then this letter had no place in the case as to the stock of Wanda Meta Steffens, because that stock was not properly in suit; and it had no place in the case as to the stock of Mrs. Classen, because the letter by its very terms refers only to the stock of the daughter which accompanied the letter.

Having no proper place in the case for any purpose, its admission in evidence was error.

In conclusion, it is respectfully urged that the judgment of the lower court should be reversed for the reasons given.

Submitted by

VICTOR H. WALLACE,
Attorney for Appellant.

COURT OF APPEALS,
DISTRICT OF COLUMBIA.
FILED

OCT 28 1904

Henry W. Hodges,
Attorney

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1904.

No. 1432.

LUSANAH A. CRANDELL, APPELLANT,

vs.

CONSTANZE CLASSEN, APPELLEE.

BRIEF FOR APPELLEE.

TRACY L. JEFFORDS,
GEORGE P. CHASE.

Attorneys for Appellee.

STATEMENT OF CASE.

In May, 1901, appellee bought of appellant for \$430 certain shares of capital stock of a corporation in which appellant was then largest stockholder. At that time appellant agreed to redeem said stock at price paid for it by appellee if at any time it was not satisfactory to her. In December same year appellee advised appellant that the stock was not satisfactory, delivered it to her, it was accepted by her and she then and there promised to pay appellee back the money she paid for it, but asked a few days time within which to do so. Later, appellee not receiving payment asked for same and was told by appellant that payment must be collected by suit. Appellee brought suit to collect same and in trial court recovered judgment for amount claimed.

From that judgment appeal was taken to this court.

ASSIGNMENT OF ERRORS.

Appellant relies on following assignment of errors:

1. The court erred in refusing to instruct the jury as requested by the defendant.
2. The court erred in the admission in evidence of the letter of June 1, 1901, over defendant's objection.

ARGUMENT.

All the record shows about marriage of parties is found on page 11 and is as follows: "The plaintiff stated that she is married."

There is nothing to show whether she was married or single at time of transaction involved in this action, or

at time it was begun We have only the bare statement that she was a married woman on the day of trial.

Marriage of appellant or her daughter does not appear from the record to be material.

Record shows that the stock was paid for by appellee with money saved by her from her own earnings and that it was her own money. Further, that the stock was her sole property, was in her sole possession, during all the time from its purchase and delivery to her until she returned it to appellant. It was the same stock for which appellant received the purchase price at time of sale and her agreement was to take back that stock and pay back the money for it. She received and accepted the stock and promised to pay appellee back the purchase price and it would seem that it is not material in whose name it was issued or whether assigned or not.

The letter of appellant acknowledging part of the purchase price of the stock in question is admissible in evidence to show price of stock, date of delivery, fact of delivery and for other reasons.

It is respectfully submitted that the judgment of the trial court should be affirmed by this court.

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GEORGE P. CHASE,
Attorneys for Appellee.